

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLES “CHAD” CAIN, III,
Plaintiff

v.

ALEDO INDEPENDENT SCHOOL
DISTRICT, FRED COLLIE and
DR. SUSAN BOHN
Defendants.

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CIVIL ACTION NO. 4:20-cv-00442-O

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S
RULE 12(b)(6) MOTION TO DISMISS DEFENDANTS’
COUNTER-CLAIM AND RULE 12(f) MOTION TO STRIKE DEFENSES**

BRIDGET ROBINSON
State Bar No. 17086800

WALSH GALLEGOS TREVIÑO
RUSSO & KYLE P.C.
P. O. Box 2156
Austin, Texas 78768
Office: (512) 454-6864
Fax: (512) 467-9318
Email: brobinson@wabsa.com

Meredith Prykryl Walker
State Bar No. 24056487

WALSH GALLEGOS TREVIÑO
RUSSO & KYLE P.C.
P.O. Box 168046
Irving, Texas 75016-8046
Office: (214) 574-8800
Fax: (214) 574-8801
Email: mwalker@wabsa.com

ATTORNEYS FOR DEFENDANTS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants, Aledo Independent School District, Fred Collie, and Dr. Susan Bohn, and file this Response to Plaintiff's Rule 12(b)(6) Motion to Dismiss Defendants' Counter-Claim and Rule 12(f) Motion to Strike Defenses. In support thereof, Defendants show as follows:

I.

1. In his Rule 12(b)(6) Motion to Dismiss Defendants' Counter-Claim and Rule 12(f) Motion to Strike Defenses, Plaintiff seeks dismissal of portions of Defendant's First Amended Original Answer, including its claim for attorneys' fees, under Federal Rule of Civil Procedure 12(b)(6). The motion also requests that the court strike Defendants' affirmative defenses pursuant to Federal Rule of Civil Procedure 12(f). Lastly, it requests that the Court order a more definite statement of Defendants' defenses pursuant to Federal Rule of Civil Procedure 12(e).

2. Plaintiff did not confer with defense counsel as required prior to the filing of a motion to strike and a motion for definite statement. Moreover, Plaintiff's motion is moot. Further, the motion fails on the merits.

II.

3. Plaintiff's motion is moot because it challenges Defendants' First Amended Original Answer that was filed in state court. (DE 10). Defendants' First Amended Original Answer has since been superseded by Defendants' Second Amended Answer, which was filed on May 21, 2020. (DE 13).

4. A counterclaim is a proper procedural vehicle for Defendants to assert a claim for attorneys' fees.

5. Plaintiff has not met his burden to strike pleadings under Federal Rule of Civil Procedure 12(f). Plaintiff has not shown that the defenses at issue are so unrelated to plaintiff's claims as to be

unworthy of any consideration or that their presence in the pleading will cause prejudice.

6. Plaintiff's FED. R. CIV. P. 12(e) request for a more definite statement is patently improper. Rule 12(e) does not apply to affirmative defenses.

III.

WHEREFORE, PREMISES CONSIDERED, Defendants Aledo Independent School District, Fred Collie and Dr. Susan Bohn pray that the Court deny Plaintiff's Rule 12(b)(6) Motion to Dismiss Defendants' Counter-Claim and Rule 12(f) Motion to Strike Defenses, and that Defendants be awarded all such other and further relief, both general and specific, at law or in equity, to which Defendants may be entitled.

Respectfully submitted,

/s/Bridget Robinson

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State Bar No. 17086800

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RUSSO & KYLE P.C.
P. O. Box 2156
Austin, Texas 78768
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

William J. Dunleavy
Law Offices of William J. Dunleavy, P.C.
825 Watters Creek Boulevard
Building M, Suite 250
Allen, Texas 75013

/s/Bridget Robinson

BRIDGET ROBINSON